

STEFAN LUMIERE V. UNITED STATES OF AMERICA

CASE NO. 18-CV-9170 (JSR/BM)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

RECEIVED
2019 JAN 31 PM 3:59
CLERK'S OFFICE

STEFAN LUMIERE,

Petitioner

v.

UNITED STATES OF AMERICA.

Respondent

Case No. 18-CV-9170 (JSR/BM)

**TO BE FILED UNDER SEAL IN ACCORDANCE WITH
PROTECTIVE ORDER**

MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE AND CONVICTION PURSUANT TO 28 U.S.C. §2255 OR TO CONSTRUE AS SUCCESSIVE RULE 29 TO DISMISS INDICTMENT AND CONVICTION DUE TO AN INSUFFICIENCY OF EVIDENCE OR ACTUAL INNOCENCE CLAIM, IN LIGHT OF ALL OF THE EXCULPATORY EVIDENCE SUBMITTED HEREIN OR AS A SUCCESSIVE RULE 33 MOTION

APPENDIX TABLE OF CONTENTS

2nd AMENDED 2255 PETITION

USDC STONY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE ENTERED: 1-31-19

STEFAN LUMIERE V. UNITED STATES OF AMERICA

CASE NO. 18-CV-9170 (JSR/BM)

PART I-A-1: A1-A4 (P8)

PART I-A-2: A4 (P9)-A13

PART I-A-3: A14-A23

PART I-B: A24-A35

PART II-1: A36-A40 (P93)

PART II-2: A40 (P94)-A52.1

PART II-3: A53-A55

PART III: A56-A133

PART IV: A134-135

PART V:

APPENDIX PART I-A-1: A1-A4(P8)

- A1 (1-4) Visium 20120 Annual Investor Day with Presenting Managers (4-4-12)
- A2 (1-8) Visium Marketing Material-Balanced Fund- March 2012
- A3 (1-17) Visium Marketing Material- Global Fund- March 2012
- A4 (1-18) Visium Marketing Material- Balanced Fund

APPENDIX PART I-A-2: A4 (P9) – A13

- A4 (9-18) Visium Marketing Material- Balanced Fund (Cont.)
- A5 (1-9) Visium Marketing Material-Credit Opportunities Fund (Partial)
- A6 (1-6) Visium Marketing Material-Balanced Fund (Partial)
- A7 Visium Marketing Material-Credit Opportunities Fund Investment Team Organization (~2009-2010)
- A8 Visium Marketing Material- Balanced Fund Investment Team Bios
- A8.1 Visium PNL Sheet- Daily PNL Report CC1-Risk Arb Pad that Lumiere managed (8-30-12)
- A9 Visium-Lumiere Business Card with title Portfolio Manager Visium Funds (Not Credit)
- A10 (1-2) Visium Funds Management
- A10.5 Visium Memo to employees about SEC Investigation into Visium Amylin Trading (7-19-12)
- A11 (1-2) Visium Credit Opportunities (No Mention of Separate Strategy Distressed/ Special Situations Portfolio)

STEFAN LUMIERE V. UNITED STATES OF AMERICA

CASE NO. 18-CV-9170 (JSR/BM)

A11.1 Abramson Email: Proffer schedule with Prosecutor letter Oct 2014

A12 (1-3) Visium Global Fund 2-29-12 (Identified Multiples Investment Managers)

A13 (1-23) Visium Credit Opportunities Offshore Fund, Ltd Oct 2010 (partial)

APPENDIX PART I-A-3: A14-A23

A14 Lumiere Chart- Multiple Roles and Varying Times at Visium

A15 (1-15) Visium Employment Agreement- Dated 2007 (Pre-exists Credit Fund)

A16 Visium Email- Risk Arb Pad Discussion- (Signature Page: Portfolio Manager Special Situations)

A17 (1-2) Transcript- Prosecutor Opening- Tr P3-4 (Prosecutor Claims that Visium is Lumiere's Hedge Fund)

A18 (1-2) Transcript- Prosecutor Opening-Tr P5-6 (Prosecutor Claims that Lumiere is Hedge Fund Manager)

A19 (1-2) Transcript- Prosecutor Opening-Tr P9-10 (Prosecutor Claims that Lumiere is Hedge Fund Manager)

A20 Transcript- Prosecutor Summation-Tr P975 (Prosecutor Claims Lumiere was Portfolio Manager of Credit)

A21(1-2) Transcript- Prosecutor Summation-Tr P976-977 (Prosecutor Claims that Lumiere was Portfolio Manager)

A22 (1-2) Transcript- Keily Direct- Tr P45-46 (no separation of Lumiere's role by fund)

A22.1 Transcript- Prosecutor Opening Statement- Tr P11 (Gov. Claims Visium is Lumiere's Hedge Fund)

A22.2 p1 Transcript- Milgram Cross-Tr P806 (Claims that Manager has No Say in Pricing)

A22.2 p2 Transcript- Milgram Cross-Tr P807 (Milgram States that Administrator Solely Prices Marblegate Tr P807)

A22.3 Transcript- Prosecutor Misstatement-Tr P80 (Lumiere is saying he is going to be focused on ATI 100%)

A22.4 Transcript- Thorell Direct- Tr P384 (Discussion of Prices with Ku as Initial Estimates only and not going into NAV)

A23 (1-97) Transcript Corrected: Lumiere-Thorell #1: (12-19-2013)

APPENDIX PART I-B: A14-A35

A24 (1-131) Transcript Corrected: Lumiere-Thorell #2: (Jan 3rd,2014)

A25 (1-17) Ability Acquisition (ATI)-VRC Report (3-31-13)

A26 (1-10) Ancora Education, (ATI Schools Newco)-VRC Report (9-30-13)

A26.1 Visium Email: J Gottlieb to Keily on ATI (1-7-13)

STEFAN LUMIERE V. UNITED STATES OF AMERICA

CASE NO. 18-CV-9170 (JSR/BM)

A26.2 Visium Email: Ku and Gottlieb prepare info asap on ATI for Morgan Stanley (MSAIP) 6-26-13

A27 (1-9) Ancora Education, (ATI Schools Newco)-VRC Report (6-30-14)

A27.1 ATI- Visium Valuation Committee Rozenberg-MSAIP Discussing Old Loans used as Shell for Valuation 6-30-13

A27.2 ATI-Visium's Valuation Committee's Rozenberg Email on Budget (3-22-13)

A27.3 (1-3) ATI-Visium Valuation Committee's Rozenberg Email

A27.4 (1-5) ATI-MSAIP Report identifying the new capital structure and valuations;

A27.5 (1-2) ATI Diligence meeting w/ Marblegate, Visium, Stroock and Versa (9-14-12)

A27.6 Visium Email: Gottlieb Email to Plaford on Visium Funding (7-19-12)

A27.61 Visium Email: Rozenberg to Plaford- ATI Valuation Committee meeting (3-22-13)

A27.62 ATI-RBC Email: ATI Weekly Cash Flow Scenarios and meeting with Financial advisors (8-5-11)

A27.7 Visium Email: Plaford to J Gottlieb discuss all the work done on ATI for improved economics (1-7-13)

A27.8 Visium Email: Keily to J Gottlieb-File Lawsuit C-Med "Champing at the bit"

A27.9 (1-3) Visium Email: Plaford asked Lumiere to prepare sheet for Josh and new capital structure (4-4-13)

A27.91 Visium Email: Lumiere asking if Plaford's positions on ATI are the old positions restructuring (4-2-13)

A28 (1-5) China Medical - VRC Report (9-30-13)

A29 (1-5) China Medical - VRC Report (12-31-13)

A30 (1-5) China Medical - VRC Report (6-30-14)

A30.1 (1-2) China Medical - Email Stroock Attorneys on Tiering Structure (12-18-2012)

A30.2 (1) China Medical- Email Stroock Directing Class Holders (9-27-12)

A30.3 (1-3) China Medical- Joint Liquidators (10-20-12)

A30.4 (1) China Medical- Offer to Bondholders Communicated by Advisors Borelli Walsh for \$105 Million (11-26-12)

A30.5 (1-6) China Medical- Liquidator Agenda- with advisors Stroock and Borelli Walsh 8-10-12

A30.6 (1-6) China Medical- Wilmington Trustee notice to bondholders 8-10-12

A31 (1-20) Ernst & Young Internal Memorandum (3-12-13)

STEFAN LUMIERE V. UNITED STATES OF AMERICA

CASE NO. 18-CV-9170 (JSR/BM)

- A31.1 (1-3) Ernst & Young Email ATI and CMED Valuation Discussion (1-21-13)
- A32 (1-4) Ernst & Young Internal Memorandum (12-31-12)
- A33 (1-20) Visium Valuation Committee Private Investment Memo (12-31-12)
- A34 (1-3) Visium Valuation Committee Agenda- Q1 2014 (7-1-14)
- A35 (1-2) Visium Valuation Committee Agenda-Q4 2014 (12-30-14)

APPENDIX PART II-1: (A36-A40)

- A36 (1-16) Nebraska Company Update-September 2011
- A37 (1-17) Nebraska- Company Update-December 2011
- A38 (1-24) Nebraska-Alvarez & Marsal Liquidity Analysis and Credit Memos
- A39 (1-24) Nebraska- Alvarez & Marsal-Presentation to Steering Committee-May 2012

{}

APPENDIX PART II-2: A40.1 (P94) – A52.1

- A40 (1-96) Sevan- Sevan Restructuring Business Plan (8-21-11)
- A41 Sevan- Interim Financial Report Third Q 2011
- A42 Sevan-Teekay agrees to acquire 3 FPSOs from Sevan 9-30-11
- A43 Sevan-First Completion of restructuring Update 11-30-11
- A44 Sevan-Restructuring Update (4-16-12)
- A45 Sevan-Sail Away of DPSO "Voyageur Spirit"
- A46 Sevan-Norske Indenture Trustee
- A47 Sevan-Letter of Intent FPSO Voyageur (7-1-10)
- A48 Sevan- Voyageur Spirit Delivered (5-2-13)
- A49 Sevan- Continuing Dialogue LT Financial Update and FPSO Sevan Voyageur (7-11-11)
- A49.1 Sevan Expense Report Sevan (9-4-11)
- A50 (1-28) ATI-Presentation of Qualifications Conway Del Genio (10-10-11)
- A51 (1-27) ATI- Materials Prepared for Discussion Miller Buckfire/Stifel Nicholas 1-6-12
- A52 (1-22) ATI-restructuring Discussion Document Jan 6, 2012
- A52.1 (1-22) ATI- Informational Memorandum Summer 2012

STEFAN LUMIERE V. UNITED STATES OF AMERICA

CASE NO. 18-CV-9170 (JSR/BM)

APPENDIX PART II-3: A53-A55

A53 (1-44) ATI- Informational Memorandum (9-21-12) (Foreclosure of assets set for Nov 2012)

A53.1 (1-2) ATI-Apollo Quarterly Update with X-Roads projections for Run Rate EBITDA

A53.2 (1-2) ATI-Apollo Quarterly Update with CDG Projections and Estimates for EBITDA

A53.3 (1-4) ATI- Apollo Quarterly Update with 3 Valuation methodologies

A54 ATI- Article from Forbes (1-17-13)

A54.1 ATI- The Street Report on Foreclosure purchase of Assets in Foreclosure by Ancora Holdings (Owned by Marblegate and Visium)

A54.2 ATI- PR newswire Article- Foreclosure of assets and purchase by Ancora Holdings

A55 ATI- PR newswire Article-BC Partners Buy ATI from Riverside 11-10-09

APPENDIX PART III (A56-A133)

A56 (1-80) Visium Compliance Manual- March 2011

A57 (1-6) Visium Compliance Manual- September 2013 (Partial)

A57.1 GAAP ASC 820 Excerpts excluded from document

A58 Visium Email- From MSFS to Mark Gottlieb- Discussion of Manager Marks (**Insert date**)

A59 Visium Email- From Jason Huemer to Vinny Natarajan- Thorell Compensation only between Plaford and Ku (**insert date**)

A60 (1-2) Visium Email- From MSFS- Deeper dive Credit Fund (**insert date**)

A61 (1-3) TIAA-CREF Asset Management Report- Investing in Middle Senior Secured Market Loans

A62 Creizman Letter to Paul Weiss- Common Interest Agreement

A63 Visium Initial Indemnification offer \$25,000 Advance (4-22-16)

A64 Visium Subsequent Indemnification Letter for Lumiere with Creizman (11-1-16)

A65 (1-6) Creizman Invoices- "Joint Defense Agreement" with Visium

A65.1 (1-4) Creizman Emails demonstrating his conflict with Lumiere

A66 DOJ Letter-Co-Conspirators "Under Seal" including Jacob Gottlieb and Steven Ku

A67 (1-2) Transcript- Judge Rakoff Order: "Co-Conspirators must come out at Trial"

A68 (1-10) Creizman Emails denying sending anything to Paul Weiss

A69 (1-8) Creizman Memorandum- Prosecutor wants Lumiere to help them get J. Gottlieb 9-8-16

A70 (1-3) Park & Jensen Email- Meeting to schedule to discuss Visium valuation issues (5-15-13)

STEFAN LUMIERE V. UNITED STATES OF AMERICA

CASE NO. 18-CV-9170 (JSR/BM)

A71 (1-4) Park & Jensen- Attorney Knuts meeting notes of Lumiere's concerns about valuation practices at Visium and recommendation with no indication of concern (5-17-13)

A72 Olshan Frome- Udell notes on discussion with Park & Jensen's Knuts

A73 Park & Jensen Email: Lumiere not wanting to forget about Visium matter (5-20-13)

A74 Park & Jensen Email: Lumiere asking if he had made any progress on Visium matter assessment (8-1-13)

A75 Park & Jensen Email: Lumiere asking about Whistleblowing to SEC (12-19-13)

A76 Park & Jensen Email: Lumiere asking to report Visium Matter to SEC (1-6-14)

A77 Park & Jensen Email: They did not advise Lumiere to report (3-3-14)

A78 (1-4) Park & Jensen Retainer Agreement Lumiere on Prosecutor investigation

A79 (1-4) Attorney Udell Proffer Notes March 12, 2014

A80 (1-11) Lumiere Proffer Notes March 17, 2014

A81 (1-5) Udell Proffer Notes March 20, 2014

A81.1 Delivery of Equipment to FBI Agent Callahan (3-20-14)

A82 (1-2) FBI Consent to Search Agreement and Rider-Attorney Udell not present for signing and did not advise as to language (4-15-14)

A82.1 FBI Return of partial computer equipment to Lumiere (4-15-14)

A83 (1-12) Attorney Abramson & Morak Notes-Discussing Cooperation (July 2014 to Feb 2016)

A83.1 Abramson & Morak: Letter to send summaries and files to Sher Tremonte (3-9-16)

A84 Painting the Tape- Airfare March 21-March 25th to Miami

A85 Painting the Tape- Hotel Room Invoice in Miami March 21-March 25th

A86 Painting the Tape- Lumiere Concert Tickets in Miami on March 23rd, 2012

A86.1 China Medical Article- China Medical is a Mystery that Most investors can't explain (3-28-12)

A87 (1-2) China Medical- Seeking Alpha report: "Evidence Suggests China Medical is taking itself private via 3rd party" (4-5-12)

A87.1 China Medical- Trade 2-24-12 Thorell with Gleacher: Bought 500M at 37.5

A88 China Medical- Trade 3-23-12 Charles Engle with Hapoalim Securities at 42.5 @ 5:31pm

A89 China Medical- Trade 3-23-12 Charles Engle with Gramercy Fund at 42.5 at 5:31pm

A90 China Medical- Trade 3-23-12 Sudarshan Jain with Brook from Janney at 43.25

A91 China Medical- Stock Chart (Shows stock price increasing from 1.35 to \$3 by 3-23-12 then peak at \$12 in July 2012)

STEFAN LUMIERE V. UNITED STATES OF AMERICA

CASE NO. 18-CV-9170 (JSR/BM)

A92 (1-5) China Medical- Stock Price & Volume Tables identifying increase in stock price on volume over this period from \$1.35 to \$12 per share

A93 China Medical "Painting the Tape": Lee Brown Chat with Janney (3-23-12)

A93.5 China Medical- Bond Quotes and Markets from Banc of America, Albert Fried, Jefferies in the 40's (3-26-12)

A94 China Medical- Ameesh Shah Email invitation for lender call scheduled for 3-26-12 (3-21-12)

A95 China Medical- Email: Plaford to Ameesh Shah "moving forward with CMED (4-23-13)

A96 China Medical- Email: Ameesh Shah to Rozenberg-Discussion of C-Med and value (7-16-12)

A97 China Medical- Email Thorell to Plaford- C-Med difficult to buy at any level (No Sellers) (2-26-12)

A98 Creizman- Email from Lumiere with list of witnesses to call and statements would make (12-13-16)

A99 (1-9) Recordings summary- Prepared by Abramson & Morak shows Lumiere's Good Faith

A99.1 Abramson Email: With DOJ Conference (6-16-14)

A99.2 Abramson Email: With DOJ to discuss Lumiere (9-11-14)

A99.3 Abramson Email: with Lumiere: Discuss next steps with Prosecutor (9-16-14)

A99.4 Abramson Email: with DOJ: Proffer cancelled (10-15-14)

A99.5 Abramson Email: With Lumiere: Actions are not in dispute but knowledge is (2-24-16)

A99.6 Abramson Email: with Lumiere: Fire Abramson & Morak (3-4-16)

A99.7 Abramson Email: with Lumiere: Fire A&M (3-4-16)

A99.8 Abramson Email: with Lumiere: Apology to Lumiere (3-4-16)

A100 (1-40) Creizman- Emails where he threatened Lumiere illegally.

A101 Creizman- Email identifying Trial Errors for Motion for New Trial including: Mistrial based on Prosecutor inclusion of privileged material in Trial, Prosecutorial Misconduct by making materially misstating evidence; Prejudicial Errors in testimony.

A102 Creizman- Lumiere Email that he told Creizman that he wanted to testify and to discuss this if permitted

A102.1 Foley & Lardner Email: Lumiere asking for incomplete discovery and subpoena information requested of Visium (4-18-17)

A103 Creizman- Email stating that he is not properly arguing for more discovery time for complex case

A104 PNL Contribution Email for 2009, 2010, 2011, 2012

STEFAN LUMIERE V. UNITED STATES OF AMERICA

CASE NO. 18-CV-9170 (JSR/BM)

A105 Outten Email: "Cease and Desist" for J. Gottlieb's disparagement of Lumiere

A106 Visium "Claw back" audit documents from Prosecutor. (VAM 000228974, VAM 000228975, VAM 000228976; VAM 000650848; VAM 000650849; VAM 000650850)

A107 (1-4) Stroock Email-Stroock Referral to Employment Attorney Outten (4-13-13)

A108 (1-2) Outten Email: Advice to Lumiere on how to leave Visium 4-16-13

A109 Outten Email: Advised to continue working until a settlement is reached

A110 Visium Email-Scheduled call with David Keily 4-18-13

A111 Outten Email-Strategy for discussion with Gottlieb 4-17-13

A112 Visium Email-Huemer Email on scheduling call to discuss departure 4-18-13

A113 Visium Email-Call with Huemer and Keily 4-18-13

A114 Lumiere seeks advice from Outten after Visium locked him out during settlement discussions 4-30-13

A115 Outten Email: Lumiere Locked Out from Visium During Settlement Discussions

A116 Visium Email- Keily stating that Visium is interpreting Lumiere's dissatisfaction with Visium as a voluntary resignation that Lumiere initiated and not the other was around.

A117 Oscar Gruss Contract-Lumiere offer Special Situations Analyst for Minimum Guarantee of \$250k (3-2-05)

A118 Brencourt Advisors Contract with \$400k "Minimum Guarantee" (8-4-06)

A119 Brencourt Advisors: Lumiere total compensation of \$879,150 for 2006

A120 Nomura Contract- Director Head of Special Situations Research with \$800k 2-year contract.

A120.1 Wall Street Letter- Lumiere hired as Director Special Situations at Nomura (5-15-06)

A121 Plaford/Vandersnow discussion with Vandersnow over Bloomberg requesting quotes and mentioning USON Settlement offer.

A122 (1-3) Princeridge Corporate information- Sizable operation and subsidiary of UFMI public company

A123 Princeridge announcement naming McNamara as MD reporting to Vandersnow COO of Corporate Bonds.

A124 (1-13) Janney overview describing sizable business subsidiary of Penn Insurance with \$65 Billion in Assets

A125 Broker Quote samples from Vandersnow and Janney to both Thorell and Lumiere and not just Lumiere as Thorell and Jindra falsely testified; Also quotes in 11 names per month were sent and not 50 to 75.

A126 Visium Price Exception Report

STEFAN LUMIERE V. UNITED STATES OF AMERICA

CASE NO. 18-CV-9170 (JSR/BM)

A127 Vandersnow quotes versus other brokers showing not a significant disparity given that no evidence of actual markets in many of the bonds.

A128 Visium Document Identifying CMED and ATI Marked by Valuation Committee

A129 Janney Montgomery discussion that CMED is restricted shortly after the alleged painting the tape Trade and other party is restricted in discussions identifying the steering committee meeting.

A130 (1-3) Tawil's (Defense Expert Witness) disclosure of what he would testify to pursuant to Rule 16 (b)(1)(c)

A131 (1-2) Creizman Email on Rule 16 violations: 18-hours of Thorell recordings approximately 1 week before trial

A132 (1-2) Visium Email: Plaford asks Lumiere to help Lee Brown work with Lifecare as distressed experience lacking (5-31-12)

A133 (1-2) Creizman discussion in Chat about redacted John Brook 3500

APPENDIX PART IV: A134-A135

A134 (1-2) Affidavit- Partner from Brown Rudnick- Steven Pohl- Re: Nebraska Book Company

A135 (1-2) Affidavit- CEO of AMA Capital (“AMA”) - Paul Leand, Jr.- Re: Sevan Marine

APPENDIX PART V: A136- 154(* denotes to be filed under seal in accordance with protective order)

A136 Creizman notes of Bloomberg reporter on Thorell Blackmail discussion of Gottlieb

A137 Affidavit of A. Gottlieb (in process)

*A138 Lumiere #2 Corrected Transcript P31 “Of course we can’t extort him”

*A139 Lumiere #2 Corrected Transcript P 84 “Of course we can’t extort him”

A140 Plaford-Ameesh CMED-Transcript

A141 (1-50) Plaford-YE Review 2012

*A142 Lumiere-Thorell #3 P58 “told them don’t use this as a bargaining chip”

A143 (1-2) Jake Gottlieb Notes

*A144 Thorell-Gottlieb recorded meeting (JT-JG-6-4-13-1 thru 4) (Sealed)

*A145 Thorell-Ku recorded meeting (JY-SK-1-7-13-1 thru 8) (Sealed)

*A146 Thorell-Ku recorded meeting (JT-SK-2-8-13) (Sealed)

*A147 (1-5) Udell email to Prosecutor with list of attorneys asserting privilege (4/3/14)

*A148 (1-9) Attempt to seek insurance and indemnification for attorneys blocked by Visium

STEFAN LUMIERE V. UNITED STATES OF AMERICA

CASE NO. 18-CV-9170 (JSR/BM)

*A149 Visium Credit Offering Memorandum- Section Pricing and Administrator
*A150 Plaford 3500
*A151 Rozenberg 3500
*A152 Brook 3500
*A153 Transcript corrected Thorell Lumiere Bar 7 2013
*A154 Communication between Prosecutor and Petitioner Attorney 2/26/14